

TSMM130095322022



Presented on : 30-06-2022
Registered on : 21-09-2022
Decided on : 14-02-2025
Duration : 2 years, 7 months, 14 days

**IN THE COURT OF THE I ADDITIONAL JUNIOR CIVIL JUDGE-CUM-
V-ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS,
MEDCHAL MALKAJGIRI DISTRICT UPPAL AT L.B.NAGAR**

PRESENT: Ms Sireesha Jaddidi
I Additional Junior Civil Judge-Cum-
V Additional Judicial Magistrate of First Class
Uppal at L.B.Nagar

DATED ON 14th DAY OF FEBRUARY, 2025

Original Suit No. 1548 of 2022
(Old OS No. 544 of 2019)

BETWEEN:

K. Someshwar,
S/o. Late K. Pedda Basappa,
Occ: Govt employee,
R/o. H.No. C-5-27, ONGC colony,
Rajahmundry, East Godavari,
Represented by his GPA holder,
G. Yellappa, S/o. G.C. Sunkappa,
Age: 70 years, Occ: Business,
R/o. 9-132, Laxminagar colony,
Boduppal, Medipally mandal,
Medchal Malkajgiri district

....Plaintiff

And

1. Mr. Ramana,
S/o. Not known to plaintiff,

2. Mrs. Prasanna,
W/o. Mr. Ramana,

Both are Residing at H.No. 3-105/3/2/A, Ground floor,
Plot No. 10, Survey No. 101 & 114/1 (part)
Boduppal village, Ghatkesar mandal, RR district

...Defendants

This suit came before me on 10-02-2025 for final hearing in the

presence of Sri. M. Ramu, Advocate Office Counsel for Plaintiff and Sri. M.V. Hanumantha rao, Advocate office counsel for defendants; upon hearing and perusal of the material on record and the matter having stood over for consideration till this day, the Court delivered the following:

:: J U D G M E N T ::

1. This is a suit filed by the plaintiff against the defendant to vacate and handover physical possession of suit schedule property and to pay arrears amount of Rs. 99,000/- and consequently to pay future mesne profit for wrongful use and occupation of suit schedule property at Rs. 7000/- per month from April, 2019 to till the date of vacating and delivery of possession of suit schedule property together with interest @ 18% per annum from the date of suit till the date of realization.

2. The plaint pleadings in brief are as follows:

[I] It is submitted that plaintiff is the absolute owner of the residential house bearing House No.3-105/3/2/A, ground floor bearing Plot No. 10, Survey No.101 & 114/1. (part) situated at Boduppall Village, Ghatkeshar Mandal, Medchal-Malkajgiri District (hereinafter referred as suit schedule property). It is submitted that he has nominated, appointed and authorised Mr. G. Yellappa to act as his attorney for managing and protecting his interest in his entire building property and the attorney has been managing, taking care and handling all affairs of the building of the plaintiff including inducting and evicting the tenants in the plaintiff's building property which includes the suit schedule property portion. It is submitted that the plaintiff has also executed a written authority in favour of said attorney to file and defend suit cases on his behalf vide power of attorney dated 12.11.2018 registered as document No. 354 of 20118 in

Book-IV in SRO Uppal.

[II] It is submitted that he acquired absolute right and title in respect of the suit schedule property through a will deed dated 25.02.2006 registered document no. 12 of 2006 at SRO, Uppal executed by his mother/Late Smt. Kamarthy Janakamma (hereinafter referred as deceased) and he constructed a house. It is submitted that the deceased had purchased the suit schedule property through a sale deed dated 24.02.2006 registered as document no. 2840 of 2006 in the office of SRO, Uppal and the Will Deed registered as Document No. 12 of 2006. It is submitted that defendants approached and requested the attorney to lease the suit schedule property on monthly basis and the plaintiff through his attorney (i.e Mr. G. Yellappa) leased out the suit schedule property to the defendants i.e., the ground floor portion of the residential building about four years ago i.e on or about 2015. It is submitted that the relationship between plaintiff and defendants is that of a landlord and tenant and the tenancy is on month to month basis as there is no registered lease document entered into between the plaintiff and the defendants and the last monthly rent paid by the defendants to the plaintiffs in respect of suit schedule property is Rs.4,500/-.

[III] It is submitted that defendants have paid rent for first two years rent for occupying the suit schedule property and for last 24 months, defendants have been deliberately neglecting to pay monthly rent to the plaintiff in spite of several request through his attorney. It is submitted that defendants have also avoided to enhance the monthly rent after every year of occupying the suit schedule property as agreed initially by them, at the time of renting the premises. The suit schedule property is rented to

the defendants by the GPA holder Mr. G. Yellappa and he has been interacting with the defendants at all times till date on behalf of the plaintiff and the defendants on every occasion, whenever the plaintiff through his attorney demanded for payment of outstanding rent, have avoided to pay the same on pretext or another. It is submitted that the plaintiffs GPA holder is aware of all the facts and circumstances of the present case.

[IV] It is submitted that plaintiff got issued a legal notice dated 16.03.2019 under Section 106 of Transfer of Property Act and demanded for eviction of the defendants from the suit schedule property and also for payment of all due amounts to the plaintiff and to hand over vacant physical possession of the suit schedule property to plaintiff on expiry of 15 days from the date of receipt of such notice. It is also notified to the defendants that, failing to comply with the demands made under above notice, the defendants shall be liable to pay the mesne profits / liquidated damages of Rs.7,000/- p.m. for illegally occupying the suit schedule property till the date of actual delivery of vacant physical possession of the subject property to plaintiff. It is submitted that the defendants having knowledge of the contents the legal notice in view of regular oral demands made by the plaintiff through GPA holder, deliberately avoided to receive the same as such the legal notice is returned unserved by the postal department with an endorsement 'Door Locked' and the legal notice has been sent to the correct address of the defendants as such the notice is deemed to be serviced on defendants as per law.

[V] It is submitted that the suit schedule property is situated in prime location and the said premises can easily fetch a rent of Rs.7,000/- per month if leased out today and the plaintiff is liable to pay mesne

profits/liquidated damages at above rate till vacating and handing over vacant physical possession of the suit schedule property to the plaintiff. It is submitted that the defendants are due and liable to pay monthly rent @ 4, 500/- p.m. for the months from June 2017 till March 2019 (i.e. for 22 months) totaling to Rs. 99,000/- (calculated @ Rs.4,500/- pm for 22 months) to the plaintiff towards arrears of rent for occupying the rented portion. It is submitted that the defendants are deliberately not paying monthly rents and are intentionally not vacating the suit schedule property with malafide intention to gain wrongfully and to cause wrongful loss to the plaintiff and the plaintiff reserves his right to claim damages, if any damage is found to have caused to the suit schedule property by the defendants after the physical possession is handed over to plaintiff by the defendants, and plaintiff reserve their right to initiate appropriate legal action against the defendants in that regard. It is submitted that as the defendants did not vacate the premises in spite of statutory notice terminating the tenancy and as the defendant is not paying the arrears of rent in spite of demand made in this regard, the plaintiff is left with no other alternative except to approach this court seeking eviction of defendant and recovery of possession, arrears of rent, mesne profits & damages. Hence, this suit.

3. The defendants failed to file written statement and accordingly were set exparte and Judgment was passed on 27-01-2020 where "The suit is decreed in favour of the plaintiff by directing the defendant nos.1 and 2 to vacate the suit schedule property within 3 months from the date of pronouncing of this judgment and handover the vacant physical possession to the plaintiff by paying the arrears monthly rent of

Rs.99,000/- that is from June 2017 till March 2019 as Rs.4,500/- per month without any interest. The plaintiff to produce further for claiming mean profits/damages after handover possession according to the documents of Order 20 Rule 12 of CPC”.

4. The IA No. 173/2020 was filed with written statement and same was allowed and the suit was re-opened.

5. The brief averments of the written statement filed by defendants are as follows:

5.1 It is submitted that the plaintiff has filed suit by suppressing the real facts only to deprive the rights of defendants, as such the plaintiff is not entitled for any relief as he approached this court with unclean hands. It is submitted that Mr. G. Yellappa has intimated that he is only a representative of original owner and from the beginning he used to collect rents from the defendants and fact of general power of attorney came to knowledge of defendant after filing of present suit only. It is submitted that with regard to title of the property this defendant is no way concerned. It is admitted that the defendants are tenants and the monthly rent is Rs.4,500/- per month. It is denied that the defendants paid first two years rent for occupying the suit schedule property and for 24 months now, defendants have deliberately neglected to pay monthly rent to the plaintiff in spite of several request through his attorney. It is submitted that the defendants are prompt in payment of monthly rents and regularly paid every month rent to Mr. G. Yellappa and sometimes his relatives as stated above Mr. Chetan and Aruna.

5.2 The allegations that defendants have avoided to enhance the monthly rent as agreed between them is not correct. It is submitted that

there is no such understanding or agreement at any time, since the defendants are poor and initially at the inception itself they requested the said attorney and fixed rent for Rs.4,500/- per month. It is submitted that the Mr. G. Yellappa promised that he will not enhance the rent, as such question of avoiding does not arise. It is denied that the defendants have deliberately failed to pay rent due amounts to the plaintiff even though plaintiff requested for the same through his attorney Mr. G. Yellappa. The defendants denied the allegation that whenever the plaintiff through his attorney demanded for payment of outstanding rent, they have avoided to pay the averment infact defendants never avoided to pay the monthly rents.

5.3 The defendants denied that the plaintiffs' GPA holder is aware of all the facts and circumstances of the present case as he has dealt with the defendants. It is submitted that though the GPA holder is managing the affairs of the property and regularly he has been collecting the monthly rents from the defendants and there are no dues as alleged by him. It is submitted that the defendants have no knowledge about the legal notice as they have not received any notice from the plaintiff or GPA holder. It is further denied that falling to comply with the demands made under the above notice, the defendants shall be liable to pay the mense profits/liquidated damages of Rs.7,000/- per month for illegally occupying the suit schedule property till the date of actual delivery of vacant physical possession of the subject property. It is submitted that the defendants did not receive the alleged legal notice and their stay is not illegal and when the defendants paid regular rents question of issue of such notice under sec. 106 of T.P. Act is not sustainable, since the defendants have not

committed any default as they paid regularly monthly rents. It is submitted that they paid the electricity bills pertaining to bore well meter and the said GPA holder promised to settle the said issue but failed to adjust the said power supply bills paid by the defendants.

5.4 The allegation that the defendants have knowledge of contents of legal notice and that they deliberately avoided to receive same as such legal notice un-served with endorsement "Door Locked" is concerned the defendants have no knowledge about the notice or its contents. It is submitted that allegation of non-payable of rent is only a created story to evict the defendants by hook or crook, as they have decided to evict the defendants without any fault on their part they have created a story got issued notices for filing false suit.

5.5 It is denied that the schedule property is situated in prime location and can easily fetch rent of Rs.7000/- per month if leased out today, therefore the defendants are liable to pay mesne profits/liquidated damages at the above rate till vacating and handing over vacant physical possession of the suit property. It is submitted that the suit property is not located in prime area and it cannot fetch rent of Rs.7000/- per month, the plaintiff failed to file any proof in that regard, and in the absence of any such proof it cannot be said the schedule property fetch more rent. It is submitted that the question of payment of mesne profits/liquidated damages does not arise since it is residential area and the property is leased out to the defendants and defendants are not doing any business as such question of mesne profits does not arise. It is denied that defendants are due and liable to pay monthly amount to Rs.99,000/- towards arrears of rent for occupying the rented portion. It is submitted

that there is no due and every month the said GPA holder used to collect rents or he instructs his relatives to collect rents as stated supra, and sometimes he used to endorse the same on the register as there are some writings with regard to receipt of rents, he used to write date and figures, further sometimes his relatives receive rents. It is submitted that the defendants have paid rents and entries of up to May 2018 and thereafter despite receipt of said rental amount he could not made entry in view of his busy schedule since he collected rents in his residence the defendant no.1 went and hand over the amounts and sometimes defendant no.2 also handed over money, in view of trust on the GPA holder they have insisted for endorsement.

5.6 It is submitted that the defendants paid bore well charges continuously for 2 and half years whenever they request the GPA holder used to say he will finalize the accounts but did not complete it. It is submitted that on first floor 2 single bed room portions and 2nd floor 2 single bed room portions and in first floor relatives of Yellappa are staying and bore well meter connection is attached to the ground floor portion i.e. portion of defendants, initially the said Yellappa used to pay the bore well water connection every month by calculating the same to each portion equally and but since last 2 years he instructing the defendants to pay the same and not adjusting in the monthly rents for that he used to say he will finalize the same yearly at once and instructed to keep all the bill payment receipts but he failed to do so since last 2 years. It is denied that defendants deliberately not paying monthly rents and are intentionally not vacating the suit schedule property with malafide intention to gain wrongfully and to cause wrongful loss to the plaintiff. It is denied that the

plaintiff reserves his right to claim damages, if any damage is found to have caused to the suit schedule property by the defendants after the physical possession is handed over to him. It is submitted that said Yellappa every month used to inspect the property whenever receives amount as such question of damage does not arise.

5.7 It is submitted that the plaintiff has no cause of action to file present suit and the alleged cause of action is not correct and there is no bonafide reason to file suit. It is submitted that the allegation of damages does not arise since every month the said G. Yellappa used to inspect the property and his relatives are residing in 1st floor and further the allegation of arrears of rent from June, 2017 to March, 2019 does not arise when he is regularly receiving rents even up to November, 2019 the question of payment of arrears of Rs.99,000/- does not arise. It is submitted that when the GPA holder of plaintiff receiving rents regularly the question of wrongful occupation of use of the premises does not arise and as such question of payment @Rs.7000/- is farfetched truth and imaginary and the defendants are very poor family and having small earnings having knowledge about the same the GPA holder of the plaintiff only to harass the defendants has foisted said allegations and filed false suit as such the suit is liable to be dismissed and prayed to dismiss the suit.

6. Based on above said rival pleadings, the following issues are framed for trial.

(i) Whether the plaintiff is entitled for eviction of the defendant from the suit schedule property and recovery of possession thereof?

(ii) Whether the plaintiff is entitled for the arrears of monthly rent of Rs. 99,000/- (for the period from June, 2017 till March, 2019) i.e., 22 months @ Rs.4,500/- per month for occupying the suit schedule property together with interest @ 18 % per annum as contended by the plaintiff?

(iii) Whether the defendant is to pay future mense profit/damage for wrongful use and occupation of suit schedule property at the rate of Rs. 7000/- per month or at any other rate till date of vacating and delivery of physical possession of suit schedule property to plaintiff together with interest @ 18% per annum as contended by the plaintiff?

(iv) To what relief?

7. The plaintiff filed his chief affidavit in lieu of chief examination and got document marked as Ex.A1 to A7.

8. The defendant failed to adduce evidence, either oral or documentary on his behalf.

9. Heard and perused the material available on record.

10. For sake of avoiding repetition and to reduce the redundancy, the issues no.(i) and (ii) are discussed together.

11. **Issues:**

To substantiate his case, the plaintiff filed his chief affidavit as PW1/ Sri. G. Yellappa examined himself as PW1 and got documentary marked as **Ex.A1 to A7**. The documents are **Ex.A1** is Certified copy of sale deed doc.no. 2840/2006, dated 24-02-2006, **Ex.A2** is Certified copy of will deed doc.no. 12/2006, dated 25-02-2006, **Ex.A3** is Certified copy of GPA doc.no. 354/IV/2018, **Ex.A4** is Office copy of legal notice, dated 16-03-2019, **Ex.A5** is Original online postal receipts along with envelopes,

Ex.A6 is Certified copy of EC, dated 14-06-2019, **Ex.A7** is Original death certificate of Kamarthy Janakamma, dated 28-04-2017.

12. To prove his ownership over the suit schedule property the PW1 has relied on Ex.A2 is Certified copy of will deed doc.no. 12/2006, dated 25-02-2006. It is the contention of PW1 that his mother/Kamarthy Janakamma has purchased the suit schedule property from her vendors and relied on Ex.A1 is Certified copy of sale deed doc.no. 2840/2006, dated 24-02-2006. It is the contention of PW1 that he has nominated, appointed and authorised Mr. G. Yellappa to act as his attorney for managing and protecting his interest in entire building which includes suit schedule property and executed a written authority in favour of said attorney and relied on Ex.A3 is Certified copy of GPA doc.no. 354/IV/2018. The PW1 has further relied on Ex.A6 is Certified copy of EC, dated 14-06-2019 and Ex.A7 is Original death certificate of Kamarthy Janakamma, dated 28-04-2017 in support of contention of being owner of the suit schedule property.

13. It is the contention of PW1 that the vendor/defendant herein has requested the attorney for lease of the suit schedule property on monthly basis and the defendants have stayed in the ground floor portion of the residential building and the relationship between plaintiff and defendant is of landlord and tenant. The defendant through their written statement have admitted the jural relationship as tenant and contended and admitted rent of Rs. 4500/- per month. It is the contention of PW1 that the defendants has paid rent for first two years and after that neglected to pay monthly rent inspite of several requests by plaintiff. It is the contention of PW1 that he issued a legal notice, dated 16-03-2019 to the defendant

under section 106 of TP act for eviction and payment of all due amounts but the defendants avoided to receive the same and was returned as 'door locked' and relied on Ex.A4 is Office copy of legal notice, dated 16-03-2019 and Ex.A5 is Original online postal receipts along with envelops. It is the contention of PW1 that defendants are also liable to pay mense profits/liquidated damages of Rs. 7000/- p.m. for illegal occupation of the suit schedule property from the date of occupying the suit schedule property till the date of actual delivery of vacant possession and are also liable to pay monthly rent @ Rs.4500/- p.m. from June, 2017 till March 2019 amounting to Rs. 99,000/-.

14. At this outset, it is relevant to note that though the defendant have filed written statement, however they did not participate in trial and failed to cross examine the witness and did not adduced any evidence on their behalf.

15. It is the contention of defendant that the rent was fixed for Rs. 4500/- p.m. and Mr. G. Yellappa has promised that he will not enhance the rent. It is the contention of defendant that they never avoided in making the monthly rent payments. It is the contention of defendant that they have not received any legal notice as alleged by the plaintiff and the property is residential property as such it cannot fetch Rs. 7000/- per month. It is the contention of defendant that they have paid borewell charges which is attached to the ground floor for 2 and half years and whenever they requested the GPA holder but he failed to finalize the accounts. It is the contention of defendant that there are no arrears to be paid when a party did not enter into the witness box and did not expose himself to cross examine, the court can draw adverse influence against

such party to the effect what he pleaded in written statement.

16. Though the defendant have taken certain pleas, the defendants did not enter into the witness box to speak their case on oath. Therefore, pleas taken by the defendant in written statement are held to be not proved.

17. In these circumstances, in the considered opinion of the court, by virtue of oral and documentary evidence on record, the plaintiff has establish case in his favour. Accordingly, the issues no. (i) & (ii) are answered in favour of plaintiff.

18. **POINT(iii):**

The PW1 has further sought for future mesne profits at rate of Rs.7000/- per month for wrongful use and occupation of suit schedule property from April, 2019 till the date of vacating and delivery of physical possession of suit schedule property at the rate of 18% per annum from suit date till the date of realization. However, no evidence is produced by the PW1 to prove the prevailing rate of rent in the locality. Therefore, in the absence of such evidence, it is not possible to assess the mesne profits. However, it does not preclude the plaintiff from filing a separate petition for ascertainment of mesne profits. Accordingly, issue no (iii) is answered.

19. **POINT(iv):**

In the result, this suit is partly decreed:

- i. The defendants are directed to vacate and handover the vacant possession of the suit schedule property within two(2) months from the date of this order

- ii. The defendants are directed to pay amount of Rs. 99,000/- towards arrears of rent for a period from June, 2017 to March, 2019.
- iii. The petitioner is at liberty to file separate petition for ascertainment of future mesne profits.
- iv. In view of facts and circumstances there are no orders as to costs.

Typed directly on my dictation by stenographer, corrected and pronounced by me in the open Court on this the 14th day of February, 2025.

**I Addl. Junior Civil Judge – cum-
V Addl. Judicial Magistrate of First Class
at Uppal Medchal-Malkajgiri District**

APPENDIX OF EVIDENCE

WITNESS EXAMINED

For Plaintiff:

For Defendant:

PW1 : Sri. G. Yellappa

-None-

EXHIBITS MARKED

For the Plaintiff:

Ex.A1 is Certified copy of sale deed doc.no. 2840/2006, dated 24-02-2006

Ex.A2 is Certified copy of will deed doc.no. 12/2006, dated 25-02-2006

Ex.A3 is Certified copy of GPA doc.no. 354/IV/2018

Ex.A4 is Office copy of legal notice, dated 16-03-2019

Ex.A5 is Original online postal receipts along with envelopes

Ex.A6 is Certified copy of EC, dated 14-06-2019

Ex.A7 is Original death certificate of Kamarthi Janakamma, dated 28-04-2017

For the Defendant:

- None –

**I Addl. Junior Civil Judge – cum-
V Addl. Judicial Magistrate of First Class
at Uppal Medchal-Malkajgiri District**

SUIT SCHEDULE PROPERTY

All that ground floor portion of the house bearing municipal no. 3-105/3/2/A, on plot no.10 western part, in Survey Nos.101 & 114/1 parts, admeasuring 130 square yards or 108.68 square meters situated at Boduppal village and Gram Panchayat, Ghatkesar mandal, Ranga Reddy district and bounded as follows:

North: Plot No.11

South: 30' wide road

East : Plot No.10 Eastern part

West : House no.3-105/3/2 on plot no.39

**I Addl. Junior Civil Judge – cum-
V Addl. Judicial Magistrate of First Class
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